

FILED**JANUARY 25, 2008****MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT****UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION****08 C 561**ALEXEI KONSTANTINOVITCH PAVLOVITCH /A 099 346 012/)
& OLGA PAVLOVITCH /A 099 346013/)

Plaintiff,)

v.)

Gerard Heinauer, Director of the USCIS Nebraska Service)
Center, Department of Homeland Security; Emilio Gonzalez,)
Director of the U.S. Citizenship and Immigration Services,)
Department of Homeland Security; Michael Chertoff,)
Secretary, Department of Homeland Security; Michael)
B. Mukasey, Attorney General, U.S. Department of Justice)

&)

Robert S. Mueller, Director, Federal Bureau of Investigation)

Defendants)

No.

**JUDGE CONLON
MAGISTRATE JUDGE COLE****INTRODUCTION**

Plaintiffs, Alexei & Olga Pavlovitch, by their undersigned attorney, allege as follows:

1. This is an action for declaratory and mandatory relief, authorized by 28 U.S.C. §1361, the mandamus statute; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. §702, the Administrative Procedure Act, ("APA").
2. This action seeks to compel the USCIS Nebraska Service Center of the Department of Homeland Security ("DHS") to adjudicate the Plaintiffs' Forms I-485 Application to Adjust Status which were filed on March 8, 2006 and have been pending now for almost two years. The I-485 applications were based on Mr. Alexei Pavlovitch's EB-2/I-140 Immigrant Petition for Alien Worker that has been approved on May 15, 2006.

JURISDICTION AND VENUE

3. This court has jurisdiction over the present action pursuant to 28 U.S.C. §1331 & §1361, the mandamus statute; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. §702, the Administrative Procedure Act, ("APA").
4. Venue is proper in this court, pursuant to 28 U.S.C. §1391(e) in that Plaintiffs may request a hearing on the matter in the District where Plaintiffs reside.

PARTIES

5. Plaintiffs, Alexei and Olga Pavlovitch, are husband and wife. Plaintiffs reside in Chicago, Cook County, Illinois within the jurisdiction of this Court.
6. Any named defendant is sued in his official capacity only.
7. Gerard Heinauer, the Defendant herein, is the Director of the USCIS Nebraska Service Center and is sued herein in his official capacity. Defendant is responsible for the grant or denial of adjustment of status applications to permanent resident filed concurrently with immigrant petitions from certain locations across the country including Illinois. The Federal Bureau of Investigation ("FBI") is named as a party to this action because they conduct a name/security check for the DHS as part of the application process.

FACTUAL ALLEGATIONS

8. On March 7, 2006 Plaintiffs filed an I-485 Application for Adjustment of Status with Nebraska Service Center (LIN-06-113-51885 & LIN-06-135-1894). *See Exhibit 1*. This application was based on concurrently submitted (and subsequently approved) EB-2/I-140 Immigrant Petition for Alien Worker filed on behalf of Alexei Pavlovitch. *See Exhibit 2*. The priority date for processing the adjustment applications filed by the Plaintiffs is April 5, 2004.
9. On December 18, 2006 Plaintiffs made an inquiry to USCIS about the status of their I-485 applications. The response received December 21, 2006 showed that their cases are still not yet ready for decision pending background investigation. *See Exhibit 3*.
10. Subsequently, the Plaintiffs have made several attempts to have this matter adjudicated through liaison with the Department of Homeland Security. The responses received April 16, 2007 & October 29, 2007 indicate that the Plaintiffs' cases were still being held pending background investigation. *See Exhibit 4*.

11. On January 25, 2008, Plaintiffs made an online inquiry at the USCIS web-site regarding status of their adjustment applications and were informed that their applications are still pending. *See Exhibit 5.*

LEGAL BASIS

12. Mandamus is proper if: (1) the Plaintiff can show a clear right to the relief sought; (2) the Defendants have a clear, non-discretionary duty to act; and (3) no other remedy is available. *Blaney v. United States, 34 F.3d 509, 513 (7th Cir. 1994).*
13. The Congressional enactment creating the allocation for Employment-Based Immigrant Visas contains language that clearly directs DHS to distribute all available visas for a given fiscal year. See 8 U.S.C. §1153(b). "Based upon the directive language Congress chose to employ in the statute and the applicable regulations, it is evident that the appellants have a right to have their case adjudicated. *See Iddir v. INS, 301 F. 3d 492 (7th Cir. 2002)*
14. The adjudication of plaintiff's application for permanent resident status is a non-discretionary ministerial act that the USCIS has a duty to accomplish in a reasonably timely fashion. Plaintiffs' applications for adjustment of status have been pending for almost 2 years since the time of filing.
15. Currently, the Nebraska Service Center is processing I-485 applications for adjustment of status received as recently as April 2007, more than 1 year after it received Plaintiffs' applications. Defendants have failed to properly adjudicate Plaintiffs' applications for permanent residence in a timely manner. It is imperative that Plaintiffs' applications be adjudicated as soon as possible, because the delay by the DHS is unreasonable, and the Plaintiffs are precluded from enjoying the rights and responsibilities of being a lawful permanent resident in the United States due to agency inaction.
16. Failure of the Defendants to act in the accordance with their duties under the law has caused a significant emotional and financial hardship to the Plaintiffs. Plaintiffs have been unable to obtain lawful permanent residence, work and travel without restriction, and accrue time to be eligible for naturalization as a citizen of the United States.
17. Plaintiffs have no other adequate remedy to the USCIS's failure to adjudicate the application for permanent resident status.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that the Court issue a writ directing the defendants to do the following:

1. Order DHS to adjudicate plaintiffs' applications for permanent resident status;
2. Grant Plaintiffs their reasonable attorney fees and costs of this action;
3. Grant such further relief as is just and equitable.

Respectfully submitted,

MARK S. DAVIDSON
Attorney for Plaintiff

By: s/Mark S. Davidson
MARK S. DAVIDSON
Davidson & Schiller, LLC
One North LaSalle Street, Suite 2400
Chicago, Illinois 60602
Telephone: (312) 499-9000

THE UNITED STATES OF AMERICA

RECEIPT NUMBER LIN-06-113-51885		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE March 7, 2006	PRIORITY DATE	APPLICANT A99 346 012 PAVLOVITCH, ALEXEI K.
NOTICE DATE March 9, 2006	PAGE 1 of 1	
JANET L. HENNER ESQ FRAGOMEN DEL REY BERNSEN & LOEWY 515 MADISON AVE NEW YORK NY 10022		Notice Type: Receipt Notice Amount received: \$ 395.00 Section: Adjustment as direct beneficiary of immigrant petition

Receipt notice - If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at uscis.gov.
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1-800-375-5283.

If this receipt is for an I-485, or I-698 application

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving a biometrics appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken. You MUST wait for your biometrics appointment notice prior to going to the ASC for biometrics processing. This I-797 receipt notice is NOT your biometrics appointment notice and should not be taken to an ASC for biometrics processing.

WHAT TO BRING TO YOUR BIOMETRICS APPOINTMENT-

Please bring your biometrics appointment letter (with specific time, date and place where you will have your fingerprints and/or photo taken) AND your photo identification to your biometrics appointment.

Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a drivers license,
- a military photo identification, or
- a state - issued photo identification card.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 800-375-5283

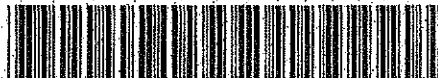


EXHIBIT 1

THE UNITED STATES OF AMERICA

RECEIPT NUMBER LIN-06-113-51894		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE March 7, 2006	PRIORITY DATE	APPLICANT A99 346 013 PAVLOVITCH, OLGA
NOTICE DATE March 9, 2006	PAGE 1 of 1	
JANET L. HENNER ESQ FRAGOMEN DEL REY BERNSEN & LOEWY 515 MADISON AVE NEW YORK NY 10022		Notice Type: Receipt Notice Amount received: \$ 395.00 Section: Derivative adjustment

Receipt notice - If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at uscis.gov.
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1-800-375-5283.

If this receipt is for an I-485, or I-698 application

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving a biometrics appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken. You MUST wait for your biometrics appointment notice prior to going to the ASC for biometrics processing. This I-797 receipt notice is NOT your biometrics appointment notice and should not be taken to an ASC for biometrics processing.

WHAT TO BRING TO YOUR BIOMETRICS APPOINTMENT

Please bring your biometrics appointment letter (with specific time, date and place where you will have your fingerprints and/or photo taken) AND your photo identification to your biometrics appointment.

Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a drivers license,
- a military photo identification, or
- a state - issued photo identification card.

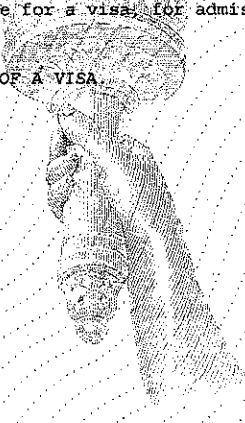
Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 800-375-5283



UNITED STATES OF AMERICA

RECEIPT NUMBER LIN-06-113-51877		CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER
RECEIPT DATE March 8, 2006	PRIORITY DATE April 5, 2004	PETITIONER CREDIT SUISSE SECURITIES LLC
NOTICE DATE May 15, 2006	PAGE 1 of 1	BENEFICIARY A099 346 012 PAVLOVITCH, ALEXEI K.
JANET L. HENNER ESQ FRAGOMEN DEL REY BERNSEN & LOWEY 515 MADISON AVE NEW YORK NY 10022		Notice Type: Approval Notice Section: Mem of Profession w/Adv Deg, or of Exceptn'l Ability Sec.203(b)(2)
<p>The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.</p> <p>The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the United States, or for an extension, change, or adjustment of status.</p> <p>THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.</p> 		

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 800-375-5283



EXHIBIT 2

U.S. Department of Homeland Security
Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521



**U.S. Citizenship
and Immigration
Services**

Thursday, December 21, 2006

ALEXEI PAVLOVITCH
333 E ONTARIO APT 2707B
CHICAGO IL 60611

Dear Alexei Pavlovitch:

On 12/18/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:

Attorney Name:

Case type:

Filing date:

Receipt #:

Beneficiary (if you filed for someone else):

Your USCIS Account Number (A-number):

Type of service requested:

The applicant

Information not available

I485

Information not available

lin-06-113-51885

Pavlovitch, Alexei

Information not available

Case Status - Outside Processing Time

The status of this service request is:

Our records indicate the I-485 application was received March 7, 2006 and is pending a decision in this office.

Currently, the application is undergoing the security checks now required on all applications prior to final review. You will be notified by mail as soon as a decision is made on the application. Day approximations on receipt notices are only an estimate and applications may require more time. Furthermore, if all initial evidence is not included with an application, or a question arises during adjudication that requires a Request for Evidence, additional time will be needed.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security
Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521



**U.S. Citizenship
and Immigration
Services**

Tuesday, December 19, 2006

OLGA PAVLIOVITCH
333 E ONTARIO APT 2707B
CHICAGO IL 60611

Dear Olga Pavlovitch:

On 12/18/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	I485
Filing date:	Information not available
Receipt #:	lin-06-113-51894
Beneficiary (if you filed for someone else):	Pavlovitch, Olga
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

Your application/petition remains awaiting review by an Officer and you will be notified as soon as a decision is made. The Service is waiting for VISA availability.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security
Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521



**U.S. Citizenship
and Immigration
Services**

Monday, April 16, 2007

ALEXEI PAVLOVITCH
333 E ONTARIO ST
#2707B
CHICAGO IL 60611

Dear Alexei Pavlovitch:

On 04/13/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	An attorney
Attorney Name:	Henner, Jannet
Case type:	I485
Filing date:	Information not available
Receipt #:	LIN-06-113-51885
Beneficiary (If you filed for someone else):	Pavlovitch, Alexei
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Non-delivery

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below. The derivative will not be adjudicated until a decision is made on the primary case.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Department of Homeland Security
Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521



**U.S. Citizenship
and Immigration
Services**

Monday, October 29, 2007

ALEXEI PAVLOVITCH
333 E ONTARIO ST, #2707B
CHICAGO IL 60611

Dear Alexei Pavlovitch:

On 10/10/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:

Attorney Name:

Attorney or Authorized Representative

Case type:

Henner, Jannet

Filing date:

I485

Receipt #:

03/28/2006

Beneficiary (if you filed for someone else):

LIN-06-113-51885

Your USCIS Account Number (A-number):

Pavlovitch, Alexei

Type of service requested:

Information not available

Non-Delivery

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

cc: Henner, Jannet

Case Status Search

Receipt Number: LIN0611351885

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

Current Status:

Case received and pending.

On March 8, 2006, we received this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NEBRASKA SERVICE CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

EXHIBIT 5

Case Status Search

Receipt Number: LIN0611351894

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

Current Status:

Case received and pending.

On March 8, 2006, we received this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NEBRASKA SERVICE CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).